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BY HAND DELIVERY

December 18, 2009

Stephen Gardner  
Project Manager  
Department of Planning  
1 Harrison Street, S.E., 3rd Floor  
Leesburg, Virginia 20177-7000



**RE: ZCPA 2006-0003/ZMAP 2006-0011, Stone Ridge Commercial**

Dear Stephen:

This letter includes our response to the proffer review comments regarding the October 26, 2009 proffer statement and the Planning Commission's comments from the December 1<sup>st</sup> work session.

Enclosed with this submission are five copies each of the revised draft proffer statement, a comparison with the last submitted version of the proffers (dated November 16, 2009), and a comparison with the October 26, 2009 version of the proffers used for the proffer review noted below. Five copies of the revised Application plan set will be delivered to you under separate cover. Please let me know the number of copies you will need for the Planning Commission packet and when you will need them.

The staff and Planning Commission comments are summarized below (noted in *Italics*) and followed by our response.

**Department of Building and Development (comments dated 11/23/09)**

*1. In regard to proffer I., in the fourth line thereof, I note that the last revision date for the CDP is listed as "October 23, 2009". While Sheets 2 through 15 show this date, the cover sheet merely states a last revision date of "October 2009". I suggest that the cover sheet reflect the same last revision date as the rest of the sheets.*

All sheets of the Application plan set have been updated with a date of December 11, 2009, and Proffer 1 has been revised accordingly.

*2. In regard to proffer I.A., in the eighth line thereof, I suggest that the phrase " , shown on the CDP as 'Dulles South Water Tanks Site'" be inserted following the phrase "The water tanks."*

The referenced proffer has been revised as suggested.

*3. In regard to proffer I.C.1., in the third line thereof, it is indicated that Land Bay EE2A may be consolidated with the "undeveloped portion" of adjacent Land Bay EE2 for development*

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*purposes. The CDP shows a portion of Land Bay EE2 as the "Remaining Portion of Land Bay EE2", with the development potential for 139 multi-family units. If this is the "undeveloped portion" of Land Bay EE2A, I suggest that the phrase "Remaining Portion of Land Bay EE2, as shown on the CDP" be substituted for the phrase "the undeveloped portion."*

The referenced proffer has been revised as suggested.

*4. In further regard to proffer I.C.1., I note that the CDP shows two areas labeled as "Land Bay EE2A". I suggest that it be clarified which portion or portions of Land Bay EE2A are being referenced in this proffer.*

The referenced proffer has been revised to specify that "all of Land Bay EE2A" may be consolidated with the Remaining Portion of Land Bay EE2.

*5. In regard to proffer I.C.1.a.(i), in the last line thereof, I suggest that the phrase "the undeveloped portion of adjacent Land Bay EE2" be changed to the "Remaining Portion of Land Bay EE2, as shown on the CDP."*

The referenced proffer has been revised as suggested.

*6. In regard to proffer I.D., I suggest that the phrase "Relocated Land Bay EE1A" be changed to "Land Bay EE1A (Relocated)" in order to match what is shown on the CDP.*

The referenced proffer has been revised as suggested.

*7. In regard to proffer I.E.2., I note that the applicant has indicated that they shall "demonstrate at the time of final site plan approval for development within Land Bay FF2B that a cumulative minimum of 120,000 square feet of floor area will be achieved within" Land Bay FF2B. I am uncertain whether the reference to "final site plan" is intended to mean the first final site plan. I suggest that this be clarified. I also question whether this is intended to mean that the first final site plan shall contain a minimum of 120,000 square feet of floor area. Again, I suggest that this be clarified.*

The referenced proffer has been revised to state "at the time of each site plan approval" within Land Bay FF2B.

*8. In regard to proffer I.E.2.a., in the first line thereof, I suggest that the phrase "this Land Bay" be changed to "Land Bay FF2B."*

The referenced proffer has been revised as suggested.

*9. In regard to proffer I.E.2.f., in the eighth line thereof, I suggest that the phrase "for a building" be changed to "for each building in Land Bay FF2B."*

The referenced proffer has been revised as suggested.

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*10. In further regard to proffer I.E.2.f, I note that the applicant has indicated the intent to have buildings in this Land Bay FF2B meet "certification requirements" of a green building organization. However, I note that there are several different levels of certification available. I suggest that a minimum level be specified.*

There are several green building organizations with whom the Applicant may pursue certification and all have different certification terminology that tend to change over time for various building types and uses. However, in an effort to address this comment, the referenced proffer has been revised to specify "base" certification requirements of a green building organization.

*11. In regard to proffer II.B., in the second paragraph thereof, I note that the applicant has indicated the intent to have all of Phase I and Phase II road improvements, as set forth in Exhibit B, constructed or bonded for construction prior to the issuance of any "zoning permits for residential units" in Land Bays 1, 2, 3, 4 or 5R. However, this does not cover the possibility of non-residential development in Land Bay 1. I suggest that this provision should apply to any zoning permit in these land bays, and not just zoning permits for residential development.*

The referenced second paragraph of proffer II.B. was included for amendment only to reflect the change in the designation of Land Bay 5 to Land Bay 5R. All Phase I and Phase II road improvements have been completed. Nevertheless, the referenced proffer has been revised to state "zoning permits for Permitted Uses (i.e., all uses permitted as a matter of right ..."

*12. In further regard to proffer II.B., I interpret Exhibit B as indicating that the improvements in Phase IIIA must also be constructed or bonded for construction prior to the issuance of any zoning permits within Land Bays 1, 2, 3, 4 or 5R, but this proffer does not so state. If this interpretation is correct, I suggest that this be clearly stated in the proffer. If this interpretation is not correct, then I suggest that this be clarified.*

Exhibit B, the Stone Ridge Phasing Plan, sets forth the road improvements required to develop progressive levels of residential, industrial and retail uses. The second paragraph of Proffer II.B. was revised with the ZMAP 2002-0013/ZCPA 2002-0004 case to clarify that permits for the residential units proposed in Land Bays 1, 2, 3, 4 and 5 would not be included in the units authorized by the completion of the Phase I and II road improvements. You are correct that Exhibit B requires the completion of the Phase IIIA improvements before residential units in Land Bays 1, 2, 3, 4 and 5R can be built. The Phase IIIA improvements have either been constructed or have approved construction plans. The referenced proffer has been revised to include Phase IIIA and, along with Phase IIIA in Exhibit B, has been revised to state "prior to the issuance of the first zoning permit for a Permitted Use in Land Bays 1, 2, 3, 4 or 5R."

*13. In regard to proffer II.B.2.(c), concerning the possibility that a trail cannot be accommodated within the right-of-way and the applicant is providing an easement for such trail, I suggest that a timing mechanism be included for the provision of such trail easement.*

The referenced proffer has been revised to provide the easement at the request of the County.

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*14. In regard to proffer II.B.3., in the last line thereof, I note that the Route 50 improvements are to be "commenced" prior to the issuance of "the first residential zoning permit" in Land Bays 1, 2, 3, 4 or 5R. I suggest that the word "commenced" be changed to "constructed or bonded for construction." I also suggest that the word "residential" be deleted so that this refers to the first zoning permit in these land bays.*

The trigger for this proffer approved with ZMAP 2002-0013/ZCPA 2002-0004 was "commence construction" to ensure that the improvements would be constructed concurrent with the first residential unit in Land Bays 1, 2, 3, 4 or 5, and not just bonded for construction. The Applicant has retained this trigger as approved by the County. However, the referenced proffer has been revised to specify "Permitted Use" rather than "residential."

*15. In regard to proffer II.B.4.(c)., in the sixth line thereof, there is a reference to "Exhibit D". I did not receive a copy of this Exhibit. I suggest that this exhibit be attached and that it be referenced by date, title and design firm that created it.*

The referenced proffer was included for amendment only to reflect the change in the designation of Land Bay 5 to Land Bay 5R. Exhibit D, part of the ZMAP 2002-0011/ZCPA 2002-0004 proffers, illustrated the proffered Route 50/West Spine Road intersection improvements. The construction plans for the Route 50/West Spine Road intersection improvements depicted on Exhibit D have been approved. Exhibit D, as approved, has been referenced in this proffer.

*16. In further regard to proffer II.B.4.(c), in the ninth line thereof, the applicant includes a timing mechanism for the Route 50 Intersection Improvements that is tied to the issuance of "the first residential zoning permit" in Land Bays 1, 2, 3, 4 or 5R. I suggest that the word "residential" be deleted, so that the trigger mechanism will be any zoning permit in these land bays.*

As noted above, the construction plans for the referenced Route 50/West Spine Road intersection improvements have been approved. Nevertheless, the referenced proffer has been revised to state "prior to the issuance of the first zoning permit for a Permitted Use..."

*17. In further regard to proffer II.B.4.(c)., in the last sentence thereof, the applicant discusses the acquisition of right-of-way, and indicates that if they are unable to obtain the right-of-way after a good faith effort, then they shall request the County to use their power of eminent domain. However, it is not clear if the applicant intends to pay for the costs of such eminent domain proceedings. I suggest that this be clarified.*

As noted above, the improvements referenced in proffer II.B.4.(c). have been approved for construction and all off-site rights-of-way and easements are in place. Nevertheless, the proffer has been clarified to state the Applicant's intent to pay for any such eminent domain proceedings.

*18. In regard to proffer II.B.4.(e)., in the fifth line thereof, I suggest that the phrase "four north-bound lanes to accommodate left turns" be changed to read "four north-bound lanes, in order to accommodate left turns."*



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The referenced proffer has been revised as suggested.

*19. In regard to proffer II.B.6., in the eighth line thereof, I suggest that the phrase "the approval of a site plan for Land Bay 8" be changed to "the approval of the first site plan for Land Bay 8."*

The referenced proffer has been expanded and incorporates the suggested language.

*20. In regard to proffer II.B.6.(a)., in the second and third lines thereof, the applicant refers to the "River and Stream Corridor 50-foot management buffer." The CDP shows a buffer for the Scenic Creek Buffer, and it shows the 100 year floodplain, and then it includes a "50' Management Buffer", which is not identified as a River and Stream Corridor buffer. I suggest that this be clarified.*

The label on the CDP has been revised to match the proffer language.

*21. In regard to proffer II.B.7., I note that the applicant has indicated that no more than 300 residential zoning permits within the combined Land Bays of 1, 2, 3, 4 and 5R may be issued prior to the construction of the improvements listed in Phase III.B. However, I note that the applicant is contemplating the possible development of non-residential uses in Land Bay 1, which could mean that only 39 residential units remain to be built in Phase III.B. I suggest that the possible development of non-residential uses in Land Bay 1 be addressed somewhere in the Phasing Plan.*

The referenced proffer has been revised to remove the zoning permit allowance and the Phasing Plan, Exhibit B, has been revised to provide that the completion of the Phase IIIA improvements will also allow the development of Permitted Uses in Land Bays 1, 2, 3, 4 and 5R.

*22. In regard to proffer II.B.8., I note that the extension of Southpoint Drive is being broken into two phases. Inasmuch as a portion of Southpoint Drive is shown as existing to the east of Gun Spring Road, I do not see why the phase two of this improvement is being made contingent on the construction of the West Spine Road from Tall Cedars Parkway to Route 50. I urge staff to consider the appropriateness of this.*

The phasing of the extension of Southpoint Drive has been proffered to address an OTS and VDOT concern regarding a connection with Gum Spring Road prior to the construction of the West Spine Road and the implementation of new traffic circulation patterns.

*23. In regard to proffer II.B.9., I note that the applicant has indicated that Stone Carver Drive shall be constructed with traffic calming measures as depicted on Sheet 15 of the Plans. Sheet 15 shows one intersection with traffic calming measures. If all intersections on Stone Carver Drive are to have such intersections, I suggest that it be clarified that the depicted traffic calming measures will apply at all intersections on Stone Carver Drive.*

Sheet 15 has been revised to clarify that the traffic calming measures apply to the entire street, not just intersections.

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24. *In regard to proffer II.C.3., in the tenth line thereof, I suggest that the phrase "earlier of" be changed to "earlier to occur of."*

The referenced proffer has been revised as suggested.

25. *In further regard to proffer II.C.3., in the last two lines thereof, I note that in this instance the applicant has referenced the "issuance of the 1<sup>st</sup> zoning permit in Land Bay 1" as a trigger mechanism, which would cover the possible development of a non-residential use in that Land Bay. However, Exhibit B, the Phasing Plan, in a note in Phase III.B., it is indicated that the trigger mechanism would be the "issuance of the first residential zoning permit in Land bay 1." I suggest that this inconsistency be eliminated.*

The referenced proffer and the notes for Phase IIIB in Exhibit B have been revised to include a trigger of the 1<sup>st</sup> zoning permit for a Permitted Use in Land Bay 1.

26. *In further regard to proffer II.C.3., and the issue of what is the appropriate trigger mechanism, I note that if the extension of Northstar Boulevard occurs upon the issuance of the first zoning permit in Land Bay 1, then there is no guarantee that the extension of Tall Cedars Parkway from the entrance to the public use site #2 to Route 659 Relocated (i.e. Northstar Boulevard) will be in place when the extension of Northstar Boulevard occurs. I suggest that consideration be given to tying the provision of the extension of Tall Cedars Parkway to the same timing mechanism as the construction of Northstar Boulevard.*

The extension of Tall Cedars Parkway to the Northstar Boulevard right-of-way has been constructed. Nevertheless, the referenced proffer has been revised to provide a similar construction trigger as Northstar Boulevard.

27. *In regard to proffer II.F.3., in the fifth line thereof, I suggest that the phrase "undeveloped portion of Land Bay EE2" be changed to "the Remaining Portion of Land Bay EE2, as shown on the CDP."*

The referenced proffer has been revised as suggested.

28. *In further regard to proffer II.F.3., I note that there is a potential for a cash contribution for the signal at Stone Springs Boulevard and Millstream Drive, in the event that warrants are not present at the time specified for the submission of a traffic study, but there is no specific timing mechanism for the provision of such cash contribution. I suggest that this be specified.*

The referenced proffer was previously revised to provide a payment trigger.

29. *In regard to proffer II.F.4., in the third line thereof, I suggest that the phrase "the earlier of" be changed to "the earlier to occur of."*

The referenced proffer has been revised as suggested.

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30. *In further regard to proffer II.F.4., in the fourth line thereof, there is a reference to the "Lenah Loop Road." However, there is no such road shown anywhere on the CDP or the Plans. I suggest that this be clarified.*

The referenced proffer has been revised to include a reference to the Countywide Transportation Plan with respect to the Lenah Loop Road.

31. *In further regard to proffer II.F.4., I again note that there is a possible cash contribution if warrants are not present at the time the traffic analysis is performed, but that there is no specific timing mechanism for the provision of such cash contribution. I suggest that such a provision be included.*

The referenced proffer has been revised to provide a payment trigger as suggested.

32. *In regard to proffer III.B.3., in the third line thereof, I suggest that the phrase "zoning permit in Land Bay 1, 2, 3, 4 or 5R" be changed to read "zoning permit in any of Land Bays 1, 2, 3, 4 or 5R."*

The referenced proffer has been revised as suggested.

33. *In regard to proffer III.B.4., I suggest that the phrase "Upon the request of the County" be moved from the fourth line to the beginning of the paragraph.*

The referenced proffer has been revised as suggested.

34. *In regard to proffer III.F., I note that the applicant states that they may utilize the Total Capital Facilities Credit as a credit against cash contributions for capital facilities required for residential units in Stone Ridge approved under ZMAP 1994-0017, "with said cash contributions escalated in accordance with proffer VII.A. of ZMAP 1994-0017 through the date of approval of this Application." As I read this, it appears to imply that the applicant intends to receive a credit for payments already made, and that the value of the previous payments is escalated. I don't think this is appropriate. I suggest that it be clarified that this provision only applies to payments made after the date of approval of this Application.*

The referenced proffer has been clarified as suggested.

35. *In further regard to proffer III.F., in the last sentence thereof, I suggest that the phrase "actually paid to the County and" be deleted. In addition, in the next to last line of the proffer, I suggest that the phrase "shall be paid to the County and" be inserted prior to the phrase "shall escalate."*

The referenced proffer has been revised as suggested.

36. *In regard to proffer III.G.3., I note that the applicant has included a provision that ties receipt of the capital facilities credit set forth in Proffer III.F. to the conveyance of Public Use Site #3. I suggest that this provision is not needed for purposes of receiving the capital facilities credit, as*

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*proffer III.F. is sufficient, but such a timing mechanism is needed for purposes of receiving credit against the requirements of proffer VII.C. Linkage Between Commercial and Residential Uses. I suggest that this proffer be clarified by changing the references accordingly. This same comment applies to the similar provision found in proffer III.G.4.*

It is not clear that the Board may elect to accept Public Use Site #3. Therefore, both the referenced proffer and Proffer III.F. have been revised to address such a situation. Proffer III.G.4. has been revised as suggested.

*37. In regard to proffer III.G.4., I note that the applicant has indicated the intent to convey Public Use Site #4 "for use as a commuter parking lot with a minimum of 100 spaces." However, in proffer III.G.4.a., the applicant has indicated that the 100 parking are to be constructed when adjacent Land Bay EE2A is "developed." In the first instance, it appears that the parking spaces are to be provided with the conveyance, and in the second instance it appears that the construction is to occur when the adjacent land bay is "developed." I suggest that this inconsistency be eliminated. I also suggest that a more specific trigger mechanism than "developed" be referenced, such as prior to approval of the first site plan.*

The referenced proffer has been revised to provide a more specific trigger as suggested.

*38. In further regard to proffer III.G.4., I urge staff to review the appropriateness of the applicant's proposed source for reimbursement for the costs of constructing the 100 parking spaces.*

The Applicant and staff have discussed this point and have verified the source of funding.

*39. In regard to proffer VI.B. Open Space Proffers, it appears that proffers VI.B.1. and VI.B.2. are being retained. If there is another intent, then I suggest that this be clarified.*

Proffers VI.B.1. and VI.B.2. are being retained.

*40. In regard to proffer VI.G., in the first line thereof, I suggest that the phrase "within the Tree Conservation Areas shown on the CDP" be inserted prior to the phrase "throughout the Property."*

The referenced proffer has been revised as suggested.

*41. In regard to proffer VI.H., the two sentences contain conflicting statements. The first sentence states unequivocally that the applicant "shall not disturb" the referenced archeological site, while the second sentence suggests that there will be land disturbance. I suggest that this inconsistency be eliminated.*

The referenced proffer has been revised to eliminate the inconsistency.

*42. In regard to proffer VII.C.1., in the second line thereof, I suggest that the word "Application" be deleted.*



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Proffer VII.C.1., the "linkage" proffer, was removed with the November 16, 2009 version of the proffer statement as the Applicant proposed floor area credit amendments to proffer I.E.2. rather than amend proffer VII.C.1.

*43. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.*

Comment acknowledged.

**Planning Commission comments from December 1, 2009 Work Session**

*1. Further discuss the land value credits and floor area credits for the proffered public use sites.*

The Applicant met with County staff (Stephen Gardner and John Merrithew) on December 8<sup>th</sup> and discussed how both land value and floor area credits for the public use sites were fair and reasonable inasmuch as a normal arms-length sales agreement would involve both the fair market value of the land and the amount of floor area to be developed. The Applicant indicated that the amount of floor area requested for the credits against the commercial/residential linkage proffer (the amounts permitted by the proffered FARs) would be reviewed. The proffers have now been revised to reduce the floor area credit for Public Use Site #3 to 24,750 square feet and to reduce the floor area credit for Public Use Site #4 to 14,720 square feet. The proffers have also been revised to clarify that in the event the County elects not to accept conveyance of Public Use Site #3, neither land value nor floor area credits for that site will be received. As of the date of this letter, the County's review of the appraisals for the public use sites had not been provided to the Applicant.

*2. Recommend that the restrictions of Postal Service and Recycling Centers be removed from the PD-IP land bay proffers.*

The referenced proffers have been revised as recommended.

*3. Request that the Applicant be responsible for the construction of Tall Cedars Parkway west of Northstar Boulevard.*

The extent of regional road responsibilities for Stone Ridge was determined by the County with the approval of ZMAP 2002-0013/ZCPA 2002-0004 and the referenced construction was not included. This application proposed no additional residential uses and a minimal increase in non-residential floor area. Therefore, there is no rational nexus to justify this request. The Applicant has agreed to other significant road improvements that will benefit the general public.

*4. Request that all road proffers commit to construction rather than construction or bonding.*

The approved "bonded or constructed" language in several of the road proffers reflects the fact that VDOT will not accept a new road until there are users for the road. Nevertheless, the revised proffers include "construction" triggers for Northstar Boulevard, Tall Cedars Parkway, Millstream Drive, Southpoint Drive and Destiny Drive.

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*5. Recommend that existing, as well as proposed, trails and sidewalks be depicted on the rezoning plans. Recommend sidewalks on both sides of Millstream Drive.*

Sheets 5 and 6 (the CDP) and Sheets 10 and 11 (the Illustrative Plan) have been revised to depict both the existing and proposed sidewalks and trails. Sidewalks and/or trails are depicted on both sides of Millstream Drive.

*6. Recommend that the construction of the two northbound lanes of Northstar Boulevard be tied to the first zoning permit in Land Bay 1.*

Proffer II.C.3. has been revised to also specify that the two northbound lanes of Northstar Boulevard will be bonded prior to the issuance of the first zoning permit for a use in Land Bay 1 and will be constructed and open to traffic prior to the issuance of the first occupancy permit for a use in Land Bay 1.

*7. Recommend that there be no disturbance within the fenced area of the archeological site without County approval.*

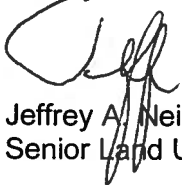
Proffer VI.H. has been revised as recommended.

We believe this response letter, the revised proffers, and the amended Application plans address all remaining staff and Planning Commission comments. We look forward to the Planning Commission work session on January 7, 2010.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Cooley Godward Kronish LLP



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Senior Land Use Planner

Enclosures

cc: Roy R. Barnett, Van Metre Companies  
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